

Background:

- **State Policy Activities** — TCDD staff will provide an update regarding recent state public policy staff activities. Discussion topics include:
 1. Health and Human Services Commission Legislative Appropriations Request Summary
 2. Special Education and School Choice
 3. Texans Care Early Childhood Education Brief
- **State Supported Living Centers Update** — TCDD staff will provide an update regarding recent SSLC issues. Discussion topics include:
 1. Texas Public Policy Foundation SSLC Issue Brief
 2. Detained Alleged Offenders with IDD
- **Federal Policy Activities**— TCDD staff will provide an update regarding recent federal public policy issues. Discussion topics include:
 1. Supreme Court of the United States Case Endrew F. v. Douglas County School District

Public Policy Committee — Agenda Item 8**Expected Action:**

The Committee will receive updates on these items and may make recommendations for consideration by the Council.

Council — Agenda Item 14**Expected Action:**

The Council will receive a report on the Public Policy Committee discussion.

TEA's Cap on Special Education Enrollment Hurts Students and Families

Snapshot of the Problem

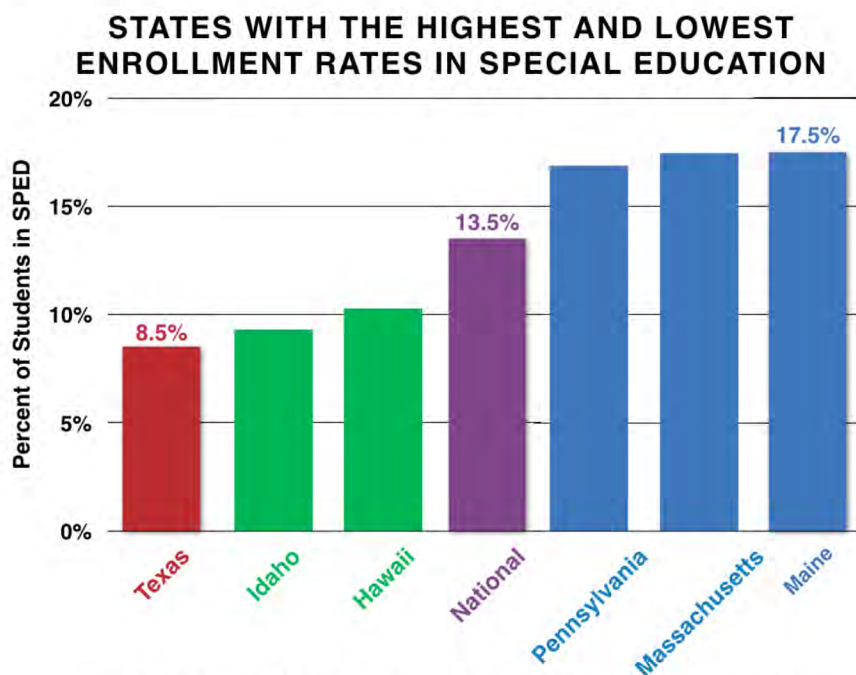
In 2004, the Texas Education Agency (TEA) created a monitoring system to measure school district performance. Buried within that system was the Special Education (SPED) Representation Indicator, which capped SPED enrollment at only 8.5%. **As a result, tens of thousands of Texas kids have been kept out and pushed out of the services to which they are legally entitled.**

What is Special Education?

- Special education is not a place. Rather, it is a **package of individualized services** that children with disabilities may use to ensure their educational success.
- The Individuals with Disabilities Education Act (IDEA) is a federal law that requires schools to provide all students with a **free and appropriate public education in the least restrictive environment**. Together, educators and parents must collaborate to decide which services best fit each student's needs.
- Special education opportunities are essential to children and families for two reasons:
 - First, SPED services provide students with the supports they need to succeed. Without these services, students with disabilities may fall behind their peers and never catch up.
 - Second, IDEA eligibility means that children also benefit from legal protections, such as procedural safeguards and parental involvement mandates, that shield vulnerable students from potential harm.

When it Comes to Special Education, Texas is an Outlier (But Not in a Good Way)

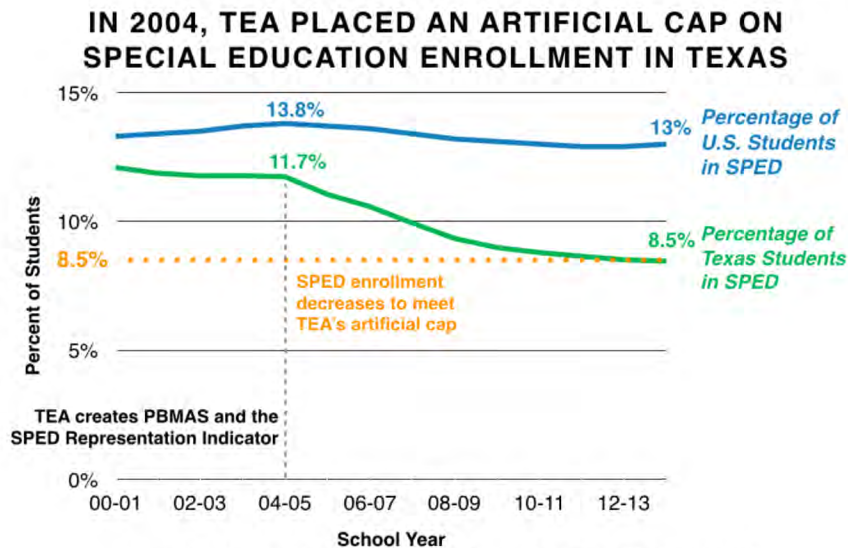
- The IDEA requires all public school districts in the United States to **proactively identify, locate, and evaluate all children with disabilities** who are in need of SPED services.
- However, as the graph below shows, Texas is an outlier in this country: school districts in Texas identify the lowest percentage of students for SPED services in the entire nation.



Source: U.S. Department of Education, National Center for Education Statistics, 2013-2014.

How does TEA's SPED Representation Indicator Work?

- TEA's SPED Representation Indicator creates a clear incentive for school districts to minimize SPED enrollment in Texas, which violates the letter and spirit of the IDEA.
- Here's how it works: If a school district enrolls more than 8.5% of its student body in SPED, then the district receives a bad grade on the Representation Indicator. As a result, that district could face sanctions, such as audits or state orders to lower the SPED rate. In contrast, if a district enrolls 8.5% or less of its student body in SPED, then that district receives the best score possible, and it is left alone.



If the SPED enrollment rate in Texas matched the national rate, then school districts could have identified over 225,000 more Texas students with disabilities during the 13-14 school year.

Sources: Texas Education Agency (TEA), *Enrollment in Texas Public Schools Series* (2003-2016), http://tea.texas.gov/acctres/enroll_index.html. TEA, *PBMS State Reports Series* (2006-2015), <http://tea.texas.gov/pbms/stateReports.aspx>. The National Center for Education Statistics (NCES), *Digest of Education Statistics* (2016), <https://nces.ed.gov/fastfacts/display.asp?id=64>. The NCES, *The Condition of Education* (2016), http://nces.ed.gov/programs/coe/indicator_cqg.asp.

How does the Cap Impact Texas Families?

- There are two ways that school districts can keep their SPED enrollment rate down to meet TEA's arbitrary 8.5% cap. First, district officials may keep students out of SPED by delaying or denying evaluations that determine if a child is eligible for services. Second, districts may push students who are already enrolled in SPED out of services by dismissing children from SPED before they are ready.
- As a result, **parents** may face the following consequences:
 - Parents report that it has become harder and harder to enroll their children in SPED within districts that are already operating at or above TEA's cap. Parents with available funds may hire an outside advocate for help. But parents without those resources may instead **spend months or years fighting for the IDEA evaluations** to which their children are legally entitled.
 - Some parents have reported feeling pressure to transfer their children to private schools. Others have chosen to quit their jobs and homeschool their children with disabilities, which could deprive those students of essential socialization and learning opportunities.¹
- Most troublingly, Texas **students** may face the following consequences:
 - Students with disabilities who are not receiving SPED services may instead receive lower-level modifications to their curricula (such as Response to Intervention strategies) that do not adequately fit their needs and goals.²
 - Without a free and appropriate public education, these students may fall behind, get held back a grade, and experience negative mental health impacts, such as depression.
 - Unaddressed needs may also lead to frustration, acting out, and increases in suspensions and expulsions. Over time, **this can increase the risk that children drop out of school entirely.**

¹ S. Hammer, "Texas Must Make Amends for Betrayal of Families," *Houston Chronicle*, Sept. 17, 2016.

² L. Pollard, "Setting Hurt Aside, Let's Focus on Fixing Special Ed. in Texas," *Houston Chronicle*, Sept. 17, 2016.



TEXAS COUNCIL *for* DEVELOPMENTAL DISABILITIES

TCDD Summary of HHSC LAR

Prior to the start of each legislative session, the Legislative Budget Board (LBB) and the Governor's Office of Budget, Policy and Planning jointly issue instructions to each Texas state agency regarding how to develop their Legislative Appropriations Request (LAR). An LAR is the agency's budget request for money to operate their programs over the next two-year biennium — Fiscal Years (FY) 2018–2019. An LAR usually includes exceptional item requests for priorities that the agency considers of great importance in addition to the base budget. At the beginning of the legislative session, the House and Senate propose budgets for Texas state agencies that may include some exceptional item requests as part of the base budget. Those that do not make it into the base in the introduced budget may remain under consideration throughout the appropriations process.

The Texas Health and Human Services Commission (HHSC) released its FY 2018–2019 LAR to the public on Friday, September 16, 2016. The HHSC LAR is seven volumes, 2,458 pages, and includes 64 exceptional items. Because parts of the Department of Aging and Disability Services (DADS), the Department of Assistive and Rehabilitative Services (DARS), the Department of Family and Protective Services (DFPS), and the Department of State Health Services (DSHS) consolidated into HHSC on September 1, the HHSC LAR is massive in comparison to prior biennia.

Budget instructions required HHSC to reduce its base budget request by 4%. The following programs were recommended for elimination or reduction in order to meet the 4% budget reduction requirement:

Program Elimination:

- DADS In-Home Family Support Program, \$10M;
- Lifespan Respite program, \$1M;
- Relocation specialist function, \$5M.

Program Reduction:

- Child Care Licensing (CCL) and Adult Protective Services (APS), \$1.7M;
- Blindness Education, Screening, and Treatment (BEST) and Comprehensive Rehabilitation (CRS), \$3M.

The LAR also includes 14 options for reducing the base budget by an additional 10%.

The Texas Council for Developmental Disabilities staff reviewed the HHSC LAR and summarized the exceptional items and budget reduction options that could impact people with intellectual and developmental disabilities (IDD). In the summary below, the General Revenue (GR), or state funds, are identified where possible. Due to complicated methods of finance, only the All Funds (AF) figure is provided for some items. In some cases, the GR and AF number is the same, which means only state funds are requested.

Below are the 64 exceptional items included in HHSC's budget request:

1. Medicaid Entitlement Cost Growth (Exceptional Item 1)

\$3.3B AF

The exceptional item would maintain Medicaid entitlement program cost growth for all acute and long-term services and supports entitlement services. LBB instructions required cost growth, including utilization and acuity changes, medical inflation, or evolving or new services to be requested as an exceptional item. The Federal Medical Assistance Percentage (FMAP) rates of 56.24% for FY 2018 and 56.25% for FY 2019 are assumed in this item, with an additional match of 6% for Community First Choice (CFC).

2. CHIP Cost Growth (Exceptional Item 2)

\$8.1M Tobacco Funds, \$106.4M AF

3. CLASS Cost Growth (Exceptional Item 3)

\$21.2M GR, \$48.4M AF

Increases in Community Living Assistance and Support Services (CLASS) waiver client acuity and service utilization costs are projected to increase by 3% per year.

4. Maintain Waiver Caseloads (Exceptional Item 4)

\$29.9M GR, \$70.2M AF

The LBB's budget instructions did not allow HHSC to prepare a draft budget request that continues to pay for waiver services that the 84th Texas Legislature said it funded. Although the 84th Texas Legislature appropriated funds to provide services to people waiting on interest lists, they did not authorize all of the people to receive services on the first day of the biennium. Instead they were authorized to prepare an interest list reduction schedule so that offers are evenly distributed across the 24 months in the biennium. Budget instructions required the agency to build the base budget by including levels at only an average of the two previous years. Because half of the people identified had yet to receive services at the time of the calculation, the funds used to pay for services started toward the biennium could not be included in the base. This routine practice requires people with disabilities to make multiple requests for the same services. If not funded, people expecting waiver offers in 2017 will not receive them or people who are receiving

services at the end of the biennium, particularly in the Home and Community-based Services (HCS) waiver program, will lose their waiver services on August 31, 2017.

5. Maintain Community Mental Health Services Programs (Exceptional Item 5)

\$4.7M GR/AF

The following programs require funding to maintain FY 2017 levels:

- A. Relinquishment Prevention (DFPS — Residential Treatment Center Bed Expansion) — If not funded, 7% fewer children would be served in residential treatment centers (30 to 28).
- B. Youth Substance Abuse Prevention — If not funded, about 51,414 fewer youth would receive expanded substance abuse prevention services, a 28% reduction.
- C. Neonatal Abstinence Syndrome Program — If not funded, 160 fewer infants would receive opioid treatment services, a 25% reduction.
- D. Recovery-Focused Clubhouses — If not funded, 138 fewer people would access services, a 36% reduction.
- E. Supported Decision-Making Program in State Hospitals — If not funded, 14 fewer people would be diverted from unnecessary guardianship, a 14% reduction.

6. Maintain ECI Caseloads (Exceptional Item 6)

\$44.76M AF

Funding for this exceptional item is to maintain FY 2017 Early Childhood Intervention (ECI) caseloads. Federal Individuals with Disabilities Education Act (IDEA) Part C regulations require all children determined eligible for the program to be served. To reduce state funding for the program, the Texas Legislature narrowed ECI eligibility criteria in FY 2012. However, the ECI program has historically seen growth in the number of children served while federal IDEA Part C funding has remained relatively level. Consequently, many providers have to resort to fundraising in order to fully meet the needs of children with developmental delays in their ECI programs. If additional funding is not appropriated, decision makers may further narrow eligibility criteria.

7. Maintain Enhanced Service Coordination & Transition Support (Exceptional Item 7)

\$13M GR

Funding for enhanced community coordination and transitional support teams funded through Money Follows the Person (MFP) Demonstration funds will not be available after FY 2017. DADS must continue current enhanced community coordination to ensure that necessary medical and/or behavioral services for individuals with complex needs are accessed, coordinated, and delivered in a person-centered manner:

- A. This item maintains funding for an enhanced array of services and supports to help local IDD authorities (LIDDAs) and community providers successfully transition people into community settings, including: service coordination for residents of nursing facilities and state-supported living centers (SSLCs); pre- and post-move monitoring; and flexible spending support.
- B. This item maintains Texas' eight regional support teams to provide technical assistance and preventive measures statewide to expand the expertise of LIDDAs and community providers related to specific disorders and diseases. Furthermore, this item ensures that LIDDAs continue to provide enhanced services and supports and identify regional challenges or gaps in available medical, psychiatric, and behavioral resources.

8. Maintain Psychiatric Bed Capacity (Exceptional Item 8)
\$121M GR

The state psychiatric hospital system is expected to lose capacity due to a variety of factors. Maintaining this capacity is important to ensure access to care close to home and in closer proximity to local law enforcement.

9. Maintain SSLC and State Hospital Staffing (Exceptional Item 9)
\$68.8M GR, \$96M AF

This exceptional item would fund salary increases at SSLCs to address staff turnover and compliance with intermediate care facility (ICF) regulations and the federal Department of Justice settlement agreement.

10. APS and CCL (Exceptional Item 10)
\$5.1M GR, \$6M AF

In order to stay within appropriated levels, the agency has used funds intended to hire staff to fund operational costs instead. This practice has resulted in a backlog that negatively impacts other areas of health and human services including a backlog of long-term services and supports provider investigations. This item would fund:

- A. Operational support costs, like travel, cell phones, leases and information technology (IT), for CCL and APS Provider Investigations (\$5M GR), and;

- B. Purchase of license rights to a quality assurance software package that will enhance CCL's quality assurance and program improvement efforts (\$70K GR).

11. Sunset/Transformation Costs, SB208 (2015) (Exceptional Item 11)
\$18.3M GR/AF

This would fund anticipated — but unfunded — costs associated with the 2015 decision to transfer Vocational Rehabilitation (VR) to the Texas Workforce Commission (TWC), as VR administrative funds were used to partially support field support staff for Comprehensive Rehabilitation Services (CRS), Children's Blindness Services, and Independent Living Services (ILS).

12. Restore 4% Reductions to BEST & CRS Programs (Exceptional Item 12)
\$1.3M GR/AF

The BEST program provides treatment for eye conditions that pose an imminent risk of permanent or significant visual loss.

The Comprehensive Rehabilitation Services (CRS) Program provides time-limited mobility, self-care, and communication skills to help Texans with a traumatic brain injury or spinal cord injury to live independently. CRS maintains a waiting list and a 4% reduction would result in additional people on the waiting list.

13. Restore Reduction to CCL and APS (DFPS) (Exceptional Item 13)
\$1.7M GR/AF

14. Promoting Independence (Exceptional Item 14)
\$50.1M GR, 114.5M AF

This item provides the following new Promoting Independence services to persons who would otherwise be entitled to more expensive institutional services:

Promoting Independence Groups	Number of People
HCS for People Moving from SSLCs	400
HCS for People Moving from Large ICFs	100
HCS for Youth Aging out of Foster Care	236
HCS for Persons at Imminent Risk of Entering an ICF	400
HCS for People with IDD Moving from State Hospitals	120
HCS for Children Moving from a general residence operations (GRO) facility (DFPS)	40

Promoting Independence Groups	Number of People
HCS for People with IDD moving from nursing facilities	700
HCS for People with IDD at risk of entering a nursing facility	600
Medically Dependent Children’s Program (MDCP) services for children at risk of entering a nursing facility (NEW)	550

15. Interest List Reduction (Exceptional Item 15)

\$346M GR, \$803.4M AF

This item says it funds 19,010 “slots,” but does not provide detail about how they would be allocated across waivers. Therefore, reviewers are unable to provide further analysis regarding how many people (by waiver) could receive waiver service offers.

16. Community Mental Health Wait List Reduction (Exceptional Item 16)

\$8.2M GR/AF

Though unclear, the detail suggests that this item funds the impact of population growth on community mental health waiting lists.

17. ILS & CRS Waiting List Reduction (Exceptional Item 17)

\$10.4M GR/AF

The ILS program provides services to eligible Texans with significant disabilities, including veterans, with support to improve their ability to function independently in their home and the community. Most requests involve the purchase of assistive technologies and devices. CRS reduces the need for ongoing state services. CRS maintains a waiting list.

18. Institution Repairs and Renovations (Exceptional Item 18)

\$189.6M GO Bonds

This item would fund health and safety renovations in state hospitals and SSLCs. The repairs and renovations include electric panels, fire alarm systems, emergency generators, roofing, HVAC systems, water and waste water lines, etc.

19. Institution Repairs — Laundry Facilities (Exceptional Item 19)

\$5.4M GR/AF

Requested exceptional item funding would be used to support 10-year replacement plan for laundry facilities. Includes vehicles and building expansion and demolition required as a result of laundry facility consolidation. NOTE: FY 2014-15 funding included a combination of bond funding totaling \$70 million for said consolidation.

20. Institutions — Vehicles (Exceptional Item 20)

\$15.8M GR/AF

Funds vehicle replacement schedule.

21. Institutions: New Construction of State Hospitals and SSLCs (Exceptional Item 21)

\$1 GR/AF

Placeholder pending legislative direction to construct new institutions.

22. Psychiatric Bed Capacity (Exceptional Item 22)

\$100.7M GR/AF

This item would fund staff and operations to add 96 beds to Vernon State Hospital. This expansion would reduce the number of people waiting in jail for a maximum security bed. It would also fund the purchase of an additional 100 beds from public and private entities around the state to ensure availability of beds to meet the demand. The state hospital long-term plan identified a significant unmet need for an additional 600 beds over the next 10 years.

23. Family Planning Services (Exceptional Item 23)

\$20M GR, \$20M AF

24. Family Violence Program (Exceptional Item 24)

\$3M GR, \$3M AF

25. CASA and CAC (Exceptional Item 25)

\$8M GR, \$8M AF

This item would increase availability of Court Appointed Special Advocates (CASA) and Child Advocacy Centers (CAC) services.

26. IBI for People with Autism (Exceptional Item 26)

\$14.3M GR, \$32.8M AF

This item would fund a new program/service called Intensive Behavioral Intervention (IBI) to address maladaptive behaviors among people with Autism Spectrum Disorder (ASD). Program would assess people for IBI treatment options and deliver a treatment plan to addresses targeted issues and goals. A contracted entity would assist with development of medical policy, prior authorization criteria and conduct utilization review for the first two years of the benefit. This entity would also develop policy regarding caregiver involvement, and establish criteria for demonstrating adequate progress toward goals for continued service authorization. Does not include behavior analyst licensing.

27. Hepatitis C Treatment (Exceptional Item 27)

\$19.8M GR/AF

28. Enhanced Mental Health Community Services (Exceptional Item 28)

\$44.5M GR/AF

This item would increase the intensity of adult and children's mental health services in communities with minimal services; provide an additional 15 RTC beds to youth who are at risk of parental relinquishment; stabilize the current substance abuse provider base and increase access to services and supports; and create Outpatient Competency Restoration — in a high demand area of the state to decrease demand for state hospital beds.

29. Sale of SSLC Services to Persons in the Community (Exceptional Item 29)

\$19.3M AF

This item funds staff to operate clinics at 12 state-operated SSLCs for people with IDD in community-based settings. SSLCs would leverage their existing space and staff. DADS estimates the annual cost to operate the clinics to be \$1.07 million per clinic. Through Medicaid waiver services billing, DADS expects the operating costs to be partially offset during the FY18–19 biennium, and become cost neutral in the next biennium. Two SSLCs were scheduled to initiate a pilot program (September 2016) to offer dental waiver services, but the Center for Medicare and Medicaid Services (CMS) recommended that Texas NOT implement a pilot to provide community services in institutional settings. They remain in negotiations to determine whether the pilot may be limited to acute services only.

30. ADRC Supports for Veterans (Exceptional Item 30)

\$1.3M GR/AF

This item would fund Aging and Disability Resource Centers (ADRCs) to ensure staff have the expertise to link veterans to service options. The ADRC cost to serve a veteran is more than three times the average cost (\$235 compared to \$72). This item would also allow for education and cross-training activities for veteran services organizations and ADRC aging and disability network partners.

31. PACE Shortfall (Exceptional Item 31)

\$5.1M GR, \$11.6M AF

This item would eliminate the Program of All-Inclusive Care for the Elderly (PACE) shortfall for the next biennium. PACE has received a funding reduction to their reimbursement rates for several years due to a shortfall in appropriated amounts. If not funded, the program will receive an approximate 12% reduction in the next biennium.

32. ICF Quality Monitoring (Exceptional Item 32)

\$6.8M GR, \$13.7M AF

This item would fund 79 additional staff to restructure ICF policy and contract requirements, stakeholder communication, financial and performance management, utilization review, and manage MCO health plan and drug formularies among other items.

33. Maintain Regulatory Workload — ALFs & DAHS (Exceptional Item 33)

\$3.9M GR, \$5.8M AF

This item would fund 36 additional staff to keep up with surveys, inspections, and complaint and incident investigations particularly for assisted living facilities (ALFs) and Day Activity and Health Services (DAHS, formerly adult day care). Workload has increased by 30% since FY 2006.

34. Federal Childcare Licensing Requirement Compliance (Exceptional Item 34)

\$12.1M AF

35. Staff to Control APS and Day Care Licensing Caseloads (Exceptional Item 35)

\$17.4M AF

36. Litigation and Legal Assistance (Exceptional Item 36)

\$3.2M AF

This item would fund 12 legal staff to defend the state in relation to the foster care lawsuit and Steward v. Abbott, the class action lawsuit regarding inappropriate placement of people with IDD in nursing facilities.

37. Mortality Review — IDD (Exceptional Item 37)

\$1.7M GR, \$3.5M AF

Independent mortality reviews have long been required for deaths of individuals with IDD who, at the time of the person's death, receive publicly-funded services; however, only SSLC resident death reviews were ever implemented. The mortality review data is intended to be used to identify trends, as well as system-wide improvements.

38. Community Attendant Wages (Exceptional Item 38)

\$156M GR, \$364M AF

This item would increase the wage floor from \$8 per hour to \$8.50 per hour, a 6.25% increase.

39. Wage Enhancement — IDD Programs (Exceptional Item 39)

\$8.5M GR, \$21.5M AF

This rate enhancement program incentivizes providers who agree to spend about 90% of their total attendant-related revenues on attendant compensation with additional wage supports. This would allow providers to participate in the program at higher levels.

40. Day Habilitation Compliance (Exceptional Item 40)

\$30.6M GR, \$70M AF

This item is included to bring Texas into compliance with the CMS Home and Community-Based Services (HCBS) Settings Rule. The agency's primary proposed strategy is to assist waiver providers and their subcontracted day habilitation providers with rate increases. Though no specifics are provided, the item also anticipates additional services, adding services to the existing service array and providing for increased contract oversight of program providers.

The federal HCBS Settings Rule require states to ensure all locations in which HCBS services are provided meet criteria regarding community integration and self-determination, setting choice, the right to privacy, dignity and respect, and individual autonomy. Texas must be in compliance by March 17, 2019. The Children's Policy Council and the IDD Statewide Redesign Advisory Committee have approved specific recommendations to improve day habilitation. Their reports are expected this fall.

41. Community Critical Incident Reporting (Exceptional Item 41)

\$1.3M GR, \$2.5M AF

This item would contract with a vendor to provide a web-based critical incident reporting system designed to meet the business, security, and reporting requirements of HHSC and contracted service providers.

42. Quality Reporting System Updates (Exceptional Item 42)

\$614K GR, 1.2M AF

This item funds a 2015 Sunset recommendation, in part, by replacing the 15-year-old Quality Reporting System (QRS). The QRS is used by individuals and families to make informed provider selections. Currently, most LIDDAs provide only a long list of providers contracted with the state to provide services. This replacement request would offer individuals the opportunity to make recommendations regarding criteria to include in the QRS, like percent of clients employed or percent of clients supported to live in more independent living settings.

43. IT: PASRR LTC Online Portal Improvement (Exceptional Item 43)

\$4.1M GR, \$16.5M AF

This item would fund IT improvements to the Long Term Care (LTC) Online Portal for claims and authorization transmission for specialized services not covered by managed care but required under the Preadmission Screening and Resident Review (PASRR) program. It would replace a paper-based process. This item may also put the state in more of a defensible position by addressing some issues associated with a class action lawsuit by ensuring that people with IDD in nursing facilities receive specialized services like employment and habilitation.

44. IT: ReHabWorks Replacement (Exceptional Item 44)

\$3.3M GR

As a result of the DARS Sunset and transfer of VR to TWC, ownership of ReHabWorks for Case Management transferred to TWC on September 1, 2016. ReHabWorks supports CRS, Blind Children's Vocational Discovery and Development Program (BCVDDP), and BEST, programs that transferred to HHSC on September 1. HHSC has entered into a memorandum of understanding with TWC to continue the use of ReHabWorks by HHSC through August 31, 2017. However, a permanent solution is required.

45. IT: Avatar (Exceptional Item 45)

\$6.1M GR

Avatar is the electronic medical record system used by the state mental health hospitals. If not funded, the state mental health hospitals would likely not be able to meet obligations for system support and would not function well enough to maintain certification.

46. IT: Electronic Life Record for RGSC (Exceptional Item 46)

\$2M GR

The SSLC portion of Rio Grande State Center (RGSC) was not included in the transition to the new DADS SSLC Life Record. This exceptional item would fund installation and development of the ability to electronically exchange patient information between the other services co-located at RGSC.

47. IT — State Mental Health Hospital Video Conferencing (Exceptional Item 47)

\$2M GR

This item would fund video conferencing technology infrastructure improvements in order to take advantage of telemedicine efficiencies.

48. IT — TIERS Transition (Exceptional Item 48)

\$12M AF

This item would fund a six-month Texas Integrated Eligibility Redesign System (TIERS) contract transition to a possible new vendor. TIERS is HHSC's service eligibility system.

49. IT: Social Security Number Removal Initiative — Medicare (Exceptional Item 49)

\$7.1M AF

50. IT: Legal Management System (Exceptional Item 50)

\$8.3M AF

51. IT: Cyber Security (Exceptional Item 51)

\$4.8M AF

52. IT: Data Center Services (DCS) (Exceptional Item 52)

\$59.7M AF

53. IT: Non-DCS Hardware/Software Refresh (Exceptional Item 53)

\$43.6M AF

54. IT: Seat Management — PCs, laptops, servers (Exceptional Item 54)

\$7.1M GR, \$7.4M AF

55. IT: Access Management (Exceptional Item 55)

\$2.7M AF

56. Inspector General (IG) Staff (18) (Exceptional Item 56)

\$1.8M AF

57. IT: IG Medicaid Fraud & Detection System (Exceptional Item 57)

\$5M GR, \$20M AF

58. IT: IG Case Management System (Exceptional Item 58)

\$2.5M GR, \$5M AF

59. IG Background Check Staff (14) (Exceptional Item 59)

\$1.1M AF

60. TCCO Caseload Growth (Exceptional Item 60)

\$5.1M GR, \$5.1M AF

This item would fund an expected increase (749 people) of locally prosecuted

Sexually Violent Predators who will require treatment and supervision by the Texas Civil Commitment Office (TCCO).

- 61. TCCO Healthcare (Exceptional Item 61)**
\$1.7M GR, \$1.7M AF
- 62. TCCO Supported Living (Exceptional Item 62)**
\$1.6M GR, \$1.6M AF
- 63. TCCO 2% Contract Per Diem Increase (Exceptional Item 63)**
\$627K GR, \$627K AF
- 64. TCCO HHSC Oversight Costs (Exceptional Item 64)**
\$213K GR, \$213 AK

10% BUDGET REDUCTION OPTIONS

A number of options were proposed for reducing the HHSC budget for FY 2018-2019 by 10%. Rate reductions make up about 2/3 of the 10% reduction options. Below are two of the options that, if passed by the Legislature, could impact people with IDD in Texas:

1. Program and Service Reductions (Option 12)

Totaling \$20.6M GR

Little detail is provided in terms of the full impact; however, this item contains reductions to the following programs:

- A. Early Childhood Intervention — \$5.6M GR
- B. Children's Blind Services — \$1.1M GR
- C. Autism — \$1.4M GR
- D. Independent Living Services — \$900K GR
- E. Comprehensive Rehabilitation Services — \$5M GR
- F. BEST — \$78K GR
- G. Deaf and Hard of Hearing — \$550K GR

2. Rate Reductions (Option 3)

Totaling \$291.2M GR, \$359.7M AF

The following programs could receive 8.2% rate reductions impacting client care: Community Attendant Services, Primary Home Care, nursing facilities, community-based intermediate care facilities, and developmental disabilities waivers.

Revised: October 5, 2016

State Supported Living Centers

The Issue

State Supported Living Centers (SSLC) are an increasingly inefficient and ineffective system of care for those with intellectual disability and/or developmental disabilities (ID/DD). The current state-run, institutional system is a Medicaid-funded program that suffers from higher provider rates, but lower quality of care than privately-run community-based facilities. While the regulating agency, the Department of Aging and Disability Services (DADS), has made tremendous progress in moving individuals from SSLCs to community care, consolidation of the facilities has yet to occur in Texas. The resulting lower census per facility has increased costs per resident and the aging structures require high maintenance costs. Overall, the SSLC system is failing financially and failing their patients.

Reports of deaths in the Lubbock SSLC and abuse in other facilities led to an investigation by the U.S. Department of Justice (DOJ) in 2005. The state of Texas entered into a settlement with the DOJ in 2009 that would ensure the standards in the SSLCs adhered to generally accepted standards of care, that protections were in place, and that residents would be given the choice to transition to community services. Despite significant reforms and increased expenditures, currently none of the 13 facilities have yet to achieve substantial compliance with the provisions of the settlement.

Past proposals to help resolve these issues by closing and consolidating Texas SSLCs have not produced any significant result. A coalition of interests—families that may have institutionalized their loved ones decades ago and do not want the SSLCs closed, lawmakers with SSLCs in their districts who are concerned about the loss of jobs, and those employed at SSLCs—have blocked reform in the past and will attempt to block future reform. For instance, during the 84th Legislature, these issues were highlighted in SB 204. This bill was based on the Sunset Advisory Commission's recommendations for the Legislature to reduce the number of SSLCs and aid in the transition to community-based services. Although the bill passed separately through both houses, the conference committee members could not come to agreement and the bill died in the last days of the session, leaving no course for reform. This is an issue because regardless of code violations or low quality of care, an SSLC cannot be closed without action by the Legislature.

Simply put, state-operated institutions cannot be relied on to police themselves or enact needed reforms, and inaction has come at the expense of Texans with ID/DD. It is long past time for Texans to join the long-term trend of deinstitutionalization and carefully, deliberately begin the process of closure and consolidation. SSLCs are closing by default as those with ID/DD and their families increasingly choose to live in the community. The only question for the lawmakers is whether they will manage the gradual decline of SSLCs, or allow them to languish at the expense of those who remain trapped in a failing system.

The Facts

- Texas has not closed an SSLC since 1996, despite a long-term decline in the average monthly census, sub-standard care, and sharply rising costs.
- The average daily population of state-run IDD facilities nationwide declined

78% between 1965 and 2011, while the share of those receiving care in the community increased 85% between 1977 and 2011.

- Community is what Texans want. There are 25,000 people eligible for placement in SSLCs who currently chose to live in the community.
- One year of services for a person in an SSLC costs about \$113,000 more than serving that same person in an equivalent program in the community.
- As of 2013, 14 states report having no state institutions for people with ID/DD, while Texas operates the most in the nation, currently with 13 SSLCs.
- During the 84th Texas Legislature, SB 200 required that the current agency in charge of regulating SSLCs, DADS, be absorbed by the Health and Human Services Commission (HHSC) by September 1, 2017.
- Texas is currently ranked 50th in a study reporting the Best Performing States for ID/DD services.

Recommendations

- The state must begin the process of closing and consolidating its SSLCs and in turn help manage the transition into a community-based system.
- Lawmakers should direct DADS/HHSC to begin closing and consolidating SSLCs, beginning with the Austin Facility, while implementing reforms to ease transition of SSLC residents into the community.
- Effective SSLC reform should include community placement for all who want it, guaranteed institutional care when families prefer that option, and appropriate assistance for displaced workers.
- Once the facilities have begun to close, DADS/HHSC should focus on improving quality of life for residents and staff at the remaining SSLCs.
- Ultimately, community-based solutions will improve accountability and in turn improve quality.

Resources

[*Department of Aging and Disability Services Report to the 84th Legislature*](#) by Amy Trost, Sunset Advisory Commission (Feb. 2015).

[*Privatize State Supported Living Centers*](#) by Arlene Wohlgemuth and Spencer Harris, Texas Public Policy Foundation (Dec. 2010).

[*DOJ Monitoring Reports*](#), Disability Rights Texas (2013).

[*A Time for Reform: Close and Consolidate Texas' State Supported Living Centers*](#) by John Davidson, Texas Public Policy Foundation (Aug. 2014).

[*Staff Report with Final Results; Department of Aging and Disability Services*](#), Sunset Advisory Commission (July 2015).

[*United Cerebral Palsy's 2015 Report*](#), United Cerebral Palsy (2015).



Criminal Justice Issue Brief

The Texas Council for Developmental Disabilities supports the position that people with intellectual, developmental and/or mental health disabilities who are victims, suspects or witnesses have the right to justice and fair treatment in all areas of the criminal justice system, including reasonable accommodations as necessary. While those with intellectual disabilities comprise 2% to 3% of the general population, they represent 4% to 10% of the prison population, with an even greater number in juvenile facilities and jails, and are 4 to 10 times more likely to be victims of crime than those without disabilitiesⁱ.

Detainees with Individuals with Intellectual Disabilities (I/DD)

Because there are several types of jails and courts, determining the true numbers of juveniles and adults with disabilities who are being detained or incarcerated is guesswork.

Local Jails

The total number of people with intellectual and developmental disabilities (I/DD) being detained in local jails is unknown. Being detained means the person has been arrested for suspicion of committing a crime.

Under Texas law, jail personnel must notify the court within 72 hours of receiving credible information that a defendant may have an intellectual disability. However, due to lack of training and experience with intellectual disability, criminal justice and court personnel are often unable to quickly identify that an individual may have an intellectual disability. In addition, even if these professionals swiftly identify that an individual may have an intellectual disability, current assessment tools are not always effective in identifying these disabilities.

In Texas, if the court determines the defendant may have an intellectual disability, the court must order the local mental health authority (LMHA) or local intellectual and developmental disability authority (LIDDA) or another qualified expert to conduct an assessment of the individual.

Competency Assessment

Article 16.22ⁱⁱ of the Texas Code of Criminal Procedure sets out the requirements regarding early identification of defendants suspected of having mental illness or intellectual disability. It requires the sheriff's office to notify the judge or magistrate within 72 hours if corrections reasonably believe a jailed suspect has a mental illness or intellectual disability. The code requires that an assessment be done to determine if the detainee is a "person with mental retardation as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant." This should happen at intake, pursuant to the Texas Commission on Jail Standards (TCJS) administrative rule that requires jails to run a check against the CCQ system (Continuity of Care Query in TCJS) to determine whether the detainee has a history of mental illness or mental retardation.

Perhaps the first breakdown is an initial assessment or observation of intellectual disability. The American Association on Mental Retardation (AAMR) defines intelligence as "a general mental ability [that] includes reasoning, planning, solving problems, thinking abstractly, comprehending complex ideas, learning quickly, and learning from experience." Assessing intellectual functioning requires specialized professional training. And, an assessment of intellectual functioning is just one element of diagnosing intellectual functioning. Experts find it is not appropriate to make a competency recommendation based solely on the score of a test.

Attorneys, law enforcement and court officials often fail to recognize intellectual disability. Even when jails and attorneys believe the person has an intellectual disability, they are not familiar with the special procedures and laws that apply to persons with intellectual disabilitiesⁱⁱⁱ that are applicable. Competency of a detainee is focused on restoration of competency, which includes mental health and substance abuse treatment services, as well as legal education, to remedy the detainee's lack of understanding and thus be determined fit to stand trial. Intellectual disability is permanent. Hastening a determination of competency does appear predictive of justice.

If a detainee is determined to be incompetent, the court still has several options. They can commit the person for 60 days for a misdemeanor and 120 days for a felony charge to a mental or residential facility under Texas Code of Criminal Procedure Article 46B.073. Individuals with I/DD experience undue lengths of time in jail due to a procedural problem. If the person with I/DD is charged with a felony and found incompetent to stand trial, they must first go to the Vernon State Hospital, a state facility specifically for

individuals with mental illness. Vernon State Hospital has only one unit for people with I/DD, resulting in these detainees waiting in jail for up to a year before being sent to Vernon to determine if they are “manifestly dangerous.”

Once determined by Vernon not to be manifestly dangerous, individuals with I/DD are then sent to Mexia SSLC, where they must be found to not be high risk before they can be transferred to the community of a closer SSLC.

Alternatively, the court could release the person on bail. If the detainee is ultimately determined incompetent to stand trial, the court can jail them for a maximum term of commitment in an SSLC or state hospital for a period that cannot exceed the maximum sentence term for the crime with which the defendant was charged. If the defendant is determined not competent and all charges dismissed, he or she can be civilly committed. Civil commitment for individuals with intellectual disabilities is court-ordered placement in a residential care facility for individuals presenting a substantial risk to themselves or others, and who are not otherwise able to adequately care for themselves in a less restrictive setting.

Alleged Offenders with I/DD

State Supported Living Centers (SSLC)

At the end of August 2015 there were a total of 195 alleged offenders, including adults and juveniles, in residence at SSLCs. The majority (73%) are males located at Mexia SSLC with the remaining 14% of females at San Angelo SSLC. Just over 30% of alleged offenders are 22 years old or younger. African Americans are disproportionately represented, making up over 33% of alleged offenders in June 2016, more than double the state’s general population (13%). Hispanics and Latinos made up approximately 26% while Non-Hispanic Whites comprised 29%, although they make up almost 39% and 43% of the general population, respectively^{iv}.

Between 2010 and 2015, a total of 387 alleged offenders were admitted.^v Over these five years, 40% of the alleged offenders were returned to jail having been found competent to proceed through the court system and 60% were transitioned to community services^{vi}. A significant issue facing alleged offenders is that the SSLC may recommend that the alleged offender move to community services, but the court can say no without a hearing. Individuals do not have the right of appeal if the court decides against the SSLC recommendation for community placement.

Offenders with I/DD

State Prisons

As of March 31, 2016, there were 679 offenders with a custody code of “intellectually impaired.” Of these, 582 male offenders with intellectual disabilities were housed at the Hodge Unit in Rusk, Texas and 88 females with intellectual disabilities were housed at

the Crain Unit in Gatesville, Texas. The remaining 9 offenders with intellectual disabilities were temporarily in intake, transient, release or medical units on that date.

State Jails

A state jail is a facility that houses offenders who receive state jail sentences. State jail sentences cannot exceed two years for one offense, but a repeat offender may receive overlapping state jail sentences not to exceed three years. The offenders are usually convicted of property and low-level controlled substance offenses. The number of offenders with I/DD in state jails could not be identified by the author.

Texas Legislative Responses

Interim Select Committee on Criminal Commitments

The 81st Legislature passed SB 643 establishing the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation [sic] to study the criminal commitment process for individuals with intellectual disabilities.^{vii} The committee found that even though there is a 72-hour window to notify the court that a detainee may have an intellectual disability, the lack of training and experience with intellectual disability results in criminal justice and court personnel not quickly identifying individuals who may have an intellectual disability. To ensure individuals are quickly identified and receive both timely and appropriate treatments and services in the setting most appropriate to their needs, changes were recommended.^{viii} Some of the Committee's recommendations were acted upon by the 84th Texas Legislature:

1. When the court determines an individual incompetent to stand trial and not likely to regain competency, the court should either civilly commit the individual for a specified time, or release the individual into the community. The Committee report did not go into detail about civil commitments, but did reference conditional release programs as examples of alternatives to criminal commitment.
2. Provide training by local authorities on intellectual disabilities similar to training currently provided by LMHAs on mental illness to law enforcement, criminal justice and court personnel.
3. Enumerate circumstances under which the court should dismiss all charges against a juvenile committed to an SSLC and release the juvenile from the court's jurisdiction. The court's ability to retain jurisdiction until a juvenile's 18th birthday, as well as the lengthy process of transferring a juvenile cases to the adult criminal courts upon their 18th birthday, has resulted in some juveniles remaining at SSLCs for inordinate amounts of time. Providing clear guidance to the courts on when charges against a juvenile should be dismissed would help to limit the potential for indeterminate or prolonged commitments to SSLCs.

Texas Council on Offenders with Medical and Mental Impairments (TCOOMMI)
Founded in 1987, the Texas Council on Offenders with Medical and Mental Impairments (TCOOMMI), as found in Health and Safety Code Section 614.001 (C).

Their authorizing statute requires TCOOMMI to “coordinate the provision of treatment, care, and services between the various agencies who provide treatment, care, or services such that they may continue to be provided to the offender at the time of arrest, while charges are pending, during post-adjudication or post-conviction custody or criminal justice supervision, and for pretrial diversion.”^{ix}

Historically, TCOOMMI has focused on offenders with mental illness, but noted in a 2009 report to the Texas Board of Criminal Justice a need to improve efforts towards identifying and responding to the needs of individuals with intellectual disabilities. A review of TCOOMMI reports since 2009 reflect the need to implement the Special Needs Offender Program. No action on diversion was found.

TCOOMMI Special Needs Offender Program

The Special Needs Offender Program (SNOP) includes mentally impaired, intellectually disabled, terminally ill, physically handicapped, and medically recommended intensive supervision caseloads. SNOP maximizes the treatment provided to offenders diagnosed with mental impairments, intellectual disabilities, terminal illness and physical impairments by providing specialized supervision.^x

Conclusion

1. In determining competency of individuals with I/DD, the law should bypass the requirement to send alleged offenders to Vernon State Hospital in order to send them directly to the Mexia facility.
2. Individuals with I/DD who are committed by the courts should receive an annual review hearing to determine if the commitment is still required and necessary.
3. Establish a state priority on identifying individuals with I/DD and diverting them from the criminal justice system:
 - a. Increase the number of case managers in the Special Needs Offender Program at TCOOMMI.
 - b. Set aside sufficient statewide funding for LIDDAs to develop and carry out training for law enforcement on recognizing people with I/DD and providing crisis intervention.

Additional Reading

Texas Public Policy Foundation. The primary author of reports on issues of individuals with mental illness in criminal justice is Kate Murphy. See <http://www.texaspolicy.com/issues/detail/civil-criminal-justice>.

Related Issue

The CMS issued a letter in May 2016 on serving justice involved individuals: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-16-21.pdf>. In this letter, CMS states that they are in process of writing separate guidance on justice involved individuals in ICFs/IID and invite advance questions and comments.

i Davis, Leigh A. People with Intellectual Disabilities in the Criminal Justice System: Victims & Suspects. 2009. Retrieved October 1, 2012 from <http://www.thearc.org/page.aspx?pid=2458>

ii Code of Criminal Procedure, §16.22 <http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.16.htm>

iii 2005 Opening the Door for Justice to Defendants with Mental Retardation (Texas Appleseed) Retrieved May 4, 2016 from <https://www.texasappleseed.org/sites/default/files/13-Mentalhealth-AttorneyHandbook.pdf>

iv US Census QuickFacts: Texas Population Estimates July 1, 2015. Retrieved October 6, 2016 from <http://www.census.gov/quickfacts/table/PST045215/48>

v Annual Report on Forensic Services in State Supported Living Centers Fiscal Year 2015. Texas Department of Aging and Disability Services. Retrieved May 4, 2015 from https://www.dads.state.tx.us/news_info/publications/legislative/forensic-fy2015.pdf

vi Ibid.

vii Overview of Texas' Correctional System. Retrieved from <http://nicic.gov/features/statestats/?State=TX> .

viii Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation. Retrieved May 4, 2016 from <http://www.senate.state.tx.us/75r/Senate/commit/c855/CriminalCommitmentsInterim81Report.pdf>

ix TCOOMMI responsibilities found at <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.614.htm>

x Special Needs Offender Program, TDCJ – TCOOMMI found at https://www.tdcj.state.tx.us/documents/parole/03.07.01_parole_policy.pdf



Supreme Court to hear special education case

WASHINGTON — The Supreme Court agreed Thursday to decide what standard of education schools must provide to students with disabilities.

The case presents the court with the difficult task of determining whether school districts receiving federal funds must offer a "substantial" education or merely make an effort to educate children under the Individuals with Disabilities Education Act, originally passed in 1990.

The law requires that students with disabilities receive "a free appropriate public education" through an individualized education program, or IEP, designed for each student. About 6.5 million such programs are written each year, but federal appeals courts are divided on the level of education that must be provided.

The federal government had recommended that the justices hear the case to resolve the circuit split and is siding with the student and family involved. The U.S. Court of Appeals for the 10th Circuit, the government says, erred in deciding that schools need to provide only a "de minimus" educational benefit.

Lawyers for Endrew F., a Douglas County, Colo., student with autism, argue in court papers that the IDEA law is interpreted differently from one school district to the next. A consistent standard, they say, would help not only students and families but school officials.

"Resolving the conflict among the circuits will ensure that millions of children with disabilities receive a consistent level of education, while providing parents and educators much-needed guidance regarding their rights and obligations," their request for a hearing states.

Throughout the country, thousands of dissatisfied parents and guardians have battled school districts for decades over what they considered inadequate efforts to educate children with disabilities. Many students have been moved from public to private schools, and parents often go to court seeking tuition reimbursement based on the public schools' alleged failure to educate their children.

In Endrew's case, court papers contend that behavioral problems in elementary school interfered with his ability to learn, but the school district offered only the same basic IEP each succeeding year. His parents' effort to get funding was rejected by a hearing officer and two lower courts; the federal appeals court said the public school district need only offer an education that is "more than de minimus."

The school district argues that the dispute boils down to semantics. It rejects

the challengers' claim that in some parts of the country, courts have approved "just-above-trivial" educational benefits. Rather, the district says, the difference is

between "some" and "meaningful" benefits -- whatever that means.

"Simply choosing an adjective ... resolves little," the school district says.

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<http://www.usatoday.com/story/news/politics/2016/09/29/supreme-court-special-education-disabilities/91262338/>

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